

Final Order Denying Refund: 04-20190832
Gross Retail Tax
For the 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

The Department did not agree with Indiana Financing Company that it was entitled to an additional refund of sales tax attributable to customers who had defaulted on their auto finance loans; the Department's request for documentation deemed necessary to verify the exact refund amount was neither unreasonable nor unjustifiable.

ISSUE

I. Gross Retail Tax - Tax Paid and Defaulted Auto Loans.

Authority: IC § 6-2.5-6-9; IC § 6-3-6-10(a); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer argues that it is entitled to a refund of sales tax paid on the sale of automobiles because a number of its finance customers had defaulted on their loans.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of financing related company's automobile sales. Taxpayer filed a December 2018 GA-110L ("Claim for Refund") seeking a refund of approximately \$9,500. On that form, Taxpayer stated it was entitled to a tax refund "for sales taxes paid on defaulted loans."

The Indiana Department of Revenue ("Department") reviewed the refund request but asked for additional documentation. Among the documentation sought was verification that the loans were assigned to Taxpayer "without recourse," a copy of its federal income tax return, verification "showing amounts of subsequently recovered bad debts written off in prior years," and copies of installment agreements it entered into with its customers.

Taxpayer objected stating that it was experienced in claiming such refunds and that the Department was now "changing the rules and guidelines" in asking for documentation Taxpayer did not possess.

The Department responded in writing January 2019 suggesting that Taxpayer provide as much of the requested documentation as was possible for Taxpayer to supply.

The Department reviewed the documentation and issued an April 2019 decision denying Taxpayer's refund in part and granting it in part. Of the \$9,500 requested, the Department refunded approximately \$4,400.

Taxpayer disagreed with the Department's decision denying the \$5,100 remaining refund and submitted a protest to that effect. Taxpayer asked for a "final determination without a hearing." This Final Order Denying Refund results.

I. Gross Retail Tax - Tax Paid and Defaulted Auto Loans.

DISCUSSION

Taxpayer argues that the Department erred in denying the additional \$4,400 refund because the Department unreasonably sought additional documentation it did not possess and which had not been requested in previous refund claims. Taxpayer states that it spent four months attempting to supply the requested documents, that it was unable to "go back into history and create something [Taxpayer] do[es] not have nor [was Taxpayer] required

to have." Taxpayer states that it accepts any changes the Department made or may have made to its refund procedures and has adapted its record-keeping system and proceeds to address future refund requests. However, Taxpayer maintains that it should now be granted that portion (\$4,400) of the refund originally denied.

When a taxpayer challenges taxability in a specific instance, the taxpayer is required to provide documentation explaining and supporting its challenge. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Indiana Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

IC § 6-2.5-6-9 allows a sales tax credit on amount "written off as an uncollectible debt"

(a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

In Taxpayer's case, the issue is whether it has provided documentation sufficient to verify the amount of its 2017 "uncollectible debt" under the provisions of the relevant Internal Revenue Code.

Indiana law imposes a record keeping and disclosure requirement. Under IC § 6-3-6-10(a), "A taxpayer subject to taxation under this article shall keep and preserve records and any other books or accounts as required by [IC 6-8.1-5-4](#). All the records shall be kept open for examination at any time by the department or its authorized agents."

The law further details the record keeping and disclosure requirement, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records. The records referred to in this subsection include all source document necessary to determine the tax, including invoices, register tapes, receipts, and cancelled checks." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

Taxpayer's objection is that the Department unreasonably demanded documents that were unnecessary to verify the amount of refund originally requested; in other words, the documentation it did present - based on its past experience - was sufficient to justify the original \$9,500 refund amount. Taxpayer has not detailed its objections. Does Taxpayer object to the request for information documenting the disposition of any wrecked vehicles? Does Taxpayer object to the request to verify that the original loans were assigned Taxpayer "without recourse"? Does Taxpayer object to the request for copies of the original installment agreements? If so, in what way were the requests unreasonable or unjustifiable?

A review of the Department's information requests appears neither unreasonable nor unjustified and the items requested would appear to be those documents prepared and kept in the ordinary course of a company in the business of dealing in and/or financing the sale of automobiles.

The Department will not second-guess the judgment exercised in reviewing Taxpayer's refund request because there is nothing in the record which establishes that the Department employees considering that refund acted outside the law, made unreasonable requests, or that the documentation request was irrelevant to the issue at hand.

FINDING

Taxpayer's protest is respectfully denied.

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